

# REGULATION

<b>SPDOC No.:</b>  04-09	<b>Effective Date:</b>  June 6, 2004	<b>Index Reference:</b>  Allocation, Compensation, Temporary Assignment, Working out of Class	<b>Regulation Number:</b>  <b>4.08</b>
<b>Issuing Bureau:</b>  Human Resource Services	<b>Rule Reference:</b> Rules: 1-3 (Regulations) 4-5 (Working out of Class) 5-1 (Civil Service Compensation Plan) 5-3 (Compensation Schedules)		<b>Replaces:</b>  Reg. 4.08 (CS-6966, January 1, 2002)
<b>Subject:</b>  <b>WORKING OUT OF CLASS</b>			

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## **1. PURPOSE**

This regulation establishes the standards and procedures to determine what constitutes working out of class for all classified employees. The standards in this regulation determine the compensation rates, eligibility, time periods, and qualification credit that may be warranted.

## 2. **CIVIL SERVICE COMMISSION RULE REFERENCE**

### ***Rule 1-3 Regulations and Advisories***

*The state personnel director is authorized to issue regulations and advisories that the director deems to be necessary or useful. A regulation issued by the state personnel director is binding unless the commission finds that the regulation violates a rule. An advisory does not have the force and effect of law and is not binding. The state personnel director shall make all regulations and advisories available to employees through their personnel offices and the internet.*

### ***Rule 4-5 Working out of Class***

- (a) Working-out-of-class assignment.** *An appointing authority may temporarily assign an employee to work out of class only if (1) the employee is performing duties and responsibilities of an existing position or (2) the department of civil service has approved in advance a request for the employee to work out of class. A working-out-of-class assignment cannot exceed one year.*
- (b) Working-out-of-class pay.** *If an employee is assigned to work out of class for more than 10 consecutive work days, the employee is entitled to supplemental pay and benefits for the temporary assignment in accordance with civil service rules and regulations.*
- (1) Claims for working-out-of-class pay.** *If an employee is assigned to work out of class and does not receive authorized supplemental working-out-of-class pay and benefits, the employee may request a technical working-out-of-class determination.*
- (A) Time limit.** *A request for a technical working-out-of-class determination must be filed during the working-out-of-class assignment or within 28 calendar days after the end of the assignment.*
- (B) Back pay.** *In a technical working-out-of-class determination, the civil service review officer may award back pay and benefits for working out of class for a maximum of one year before the end of the working-out-of-class assignment. No supplemental working-out-of-class pay or benefits are payable for any period longer than one year even if the employee worked out of class for more than one year.*
- (2) Relation to collective bargaining.** *Working out of class is a prohibited subject of bargaining. The exclusive procedure for any employee, including an exclusively represented employee, to bring a claim for working-out-of-class pay and benefits is to file a request for a technical working-out-of-class determination.*
- (c) Exclusions.** *An employee in any of the following circumstances is not considered to be working out of class:*

- (1) *The employee is working in a preauthorized position.*
- (2) *The employee is occupying a position downgraded for training.*
- (3) *The employee is occupying a position that is reclassifiable.*
- (4) *The employee is an overall assistant who normally substitutes for the employee's supervisor.*

\* \* \*

### **Rule 5-1 Civil Service Compensation Plan**

#### **5-1.1 Application**

- (a) **General application.** *All eligible employees in the classified service receive compensation and fringe benefits in accordance with the compensation plan, except as provided in subsection (b).*

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### **Rule 5-3 Compensation Schedules**

#### **5-3.1 Compensation Schedules**

*The civil service commission shall approve compensation schedules that establish the rates of compensation for each class of positions in the classified service. The rates of compensation authorized are for full-time employment. Payment for part-time service is proportionate to the time actually worked. If a new classification is added to the classification plan, the state personnel director shall initially establish the rates of compensation for the classification.*

\* \* \*

## **3. DEFINITIONS**

### **A. Civil Service Commission Rule Definition**

1. **Working out of Class** means being temporarily assigned to and performing the duties and responsibilities of another classification, in accordance with the standards in rule 4-5 [Working out of Class].

### **B. Definition as Used in This Regulation**

1. **Working out of class (WOC)** means the temporary assignment to an employee by an appointing authority or designee to perform duties and responsibilities of a different classification.

For operational purposes, an employee is recognized as working out of class when the employee (1) is temporarily assigned the duties and responsibilities of a different classification by an appointing authority or designee; (2) performs all, or substantially all, of the duties and responsibilities which distinguish the temporary assignment from the classification in which the

employee is currently classified; and (3) performs in the temporary assignment for the qualifying period of more than 10-consecutive, full workdays (80 hours).

#### **4. STANDARDS**

##### **A. Authorized.**

1. The appointing authority or agency management may assign an employee duties and responsibilities of a different classification on a temporary basis for up to 26 pay periods, ensuring equal opportunity in such assignments.
2. A working-out-of-class assignment can be made when any of the following situations exist:
  - a. It is not practical or feasible, due to time constraints, to establish, recruit for, or fill a position on a limited-term basis.
  - b. There is an urgent or critical need to have duties and responsibilities performed during the absence of another employee.
  - c. The appointing authority is in the process of recruiting to fill the position.
  - d. Pending organizational changes within the agency or changes in its leadership necessitate temporary work assignments.
  - e. It is not practical to use one of the alternatives listed in Standard E.

##### **B. Not Authorized.**

1. The following situations do not constitute working out of class:
  - a. An employee working in a pattern position or in a position downgraded for training.
  - b. An overall assistant having direct-line authority and responsibility over the organizational entity. The classification concept for the assistant takes into consideration the fact that the assistant may be required to act as the chief supervisor in the absence of the supervisor. If the supervisor is absent for more than six consecutive pay periods, the assistant may be compensated for working out of class. The working-out-of-class assignment begins after the first six pay periods and the working-out-of-class compensation will not include this qualifying period.

- c. An employee performing the permanently assigned entry/trainee through advanced-level duties and responsibilities of their position when reclassification is possible. A position reclassification and a working-out-of-class assignment are mutually exclusive events, meaning that pursuit of both applications relative to a common job assignment cannot be achieved.
2. The appointing authority cannot enter into a grievance settlement agreement for a working-out-of-class assignment as provided in rule 4-5(b)(2).

### C. Criteria.

1. All of the following criteria must be met for an employee to be recognized as working out of class:
  - a. The appointing authority must submit a Position Action Request form (CS-129), a Position Description form (CS-214), and any other necessary documentation for a classification review before processing the working-out-of-class payment when any of the following conditions exist:
    - (1) An employee is assigned duties and responsibilities that have not been classified by the Department of Civil Service.
    - (2) A question exists with the employee, the appointing authority, or the Department of Civil Service as to whether the employee has worked out of class.
    - (3) A question exists with the employee, the appointing authority, or the Department of Civil Service as to the proper classification of the temporary duties and responsibilities.
  - b. The appointing authority or designee must direct the employee to perform the duties and the responsibilities of a properly classified assignment.
  - c. The employee must perform all, or substantially all, of the duties and responsibilities that are different from the employee's classification.
  - d. The employee must perform the duties and responsibilities of a single temporary assignment for the qualifying period of more than 10-consecutive, full workdays (80 hours), interrupted only by leave usage or a holiday.
  - e. The employee should possess the education and experience requirements or be in a classification level that would ultimately satisfy the experience requirement for the working-out-of-class assignment. If the employee does not possess the required education or experience, the appointing

authority must have documentation on file as to the reason for utilizing this employee in a working-out-of-class situation. This will be subject to Department of Civil Service audit. The employee must possess any state or federal licensure, registration, and certification requirements, as stated on the job specification for positions in the classification.

2. Leave usage or the occurrence of a holiday during the qualifying period does not constitute a break or count as part of the 10-day qualifying period. The time lost because of leave usage or a holiday must be made up by an equal number of consecutive workdays before the qualifying period is complete. Once the 10-consecutive-day period has been satisfied, the employee will be compensated at the working-out-of-class pay rate for all subsequent leave usage and holidays for the duration of the working-out-of-class period.
3. An employee cannot be assigned to work out of class for initial and subsequent periods in the same assignment for more than a 12-month period. At the end of that 12-month period, the employee is not eligible for the same working-out-of-class assignment until 13 pay periods have elapsed. After the 13 pay periods, the employee must complete a new qualifying period of more than 10-consecutive, full workdays (80 hours).
4. When the appointing authority intends or has reason to believe that the working-out-of-class assignment may last more than 26 pay periods, the appointing authority should make an appointment to the position.

**D. Compensation and Qualification Credit Criteria.**

1. An employee is eligible for working-out-of-class compensation only for work that has been properly classified as required in standard C (1).
2. Once the qualifying period has been met, the employee is entitled to compensation via a pay adjustment for working out of class commencing with the first day of the assignment. The appointing authority must enter a comment line identifying the classification and position code of the position that necessitated the working-out-of-class assignment. This information is subject to review by the Department of Civil Service.
3. If an employee is assigned to work out of class for a 10-consecutive-day period and is subsequently assigned to work out of class for another 10-consecutive-day period in the same assignment in a 12-month period, the employee is entitled to working out of class compensation for the full extent of any subsequent assignments. This compensation is limited to the maximum of 26 pay periods.
4. If the appointing authority fails to notify the Department of Civil Service of a potential working-out-of-class assignment, the employee may submit a request to the Department of Civil Service for a technical working-out-of-class determination, pursuant to rules 4-5(b)(1) and 4-2(a), and

regulation 4.09 [Employee Generated Position Reviews] to determine if a working-out-of-class assignment has been made. The employee's request must be made within 28 calendar days after the assignment ends and must include a Position Description form, describing the temporary duties, and documentation that a request for working-out-of-class compensation was submitted to the appointing authority.

5. Determination of the working-out-of-class compensation rate must be in accordance with the standards in regulations 5.01 [General Salary Schedule Administration] and 5.07 [Performance-Pay Programs].
6. An employee working out of class at an equal or lower pay range than the employee's permanent classification is not eligible for working-out-of-class compensation.
7. Claims for working-out-of-class compensation must be submitted within 28 calendar days from the end of the assignment. Claims submitted after that time period are not accepted for compensation purposes.
8. Qualification credit, as determined by the Department of Civil Service, is granted for experience gained in documented working-out-of-class assignments if the employee meets the minimum education, licensure, registration, and certification requirements for the classification of the temporary assignment. This credit may only be applied once for either appointment or reclassification purposes. Credit cannot exceed a maximum of 26 pay periods for any one working-out-of-class assignment.

#### **E. Alternatives to Working out of Class.**

The following alternatives should be considered instead of working an employee out of class:

1. Assigning supervisory/managerial assignments to other supervisor/managerial personnel, eliminating the potential for working out of class.
2. Making a limited-term appointment to a position.
3. Making an emergency appointment of 28 days or less, pursuant to rule 3-3.3 and civil service regulations. Questions regarding the use of the emergency appointment process should be directed to the Department of Civil Service.
4. Rotating the potential working-out-of-class assignment among several employees in the work area, being mindful of the limitations set forth in this regulation on working an employee out of class.
5. Dividing the work function among the other employees in the work area, eliminating the potential for a working-out-of-class assignment.

## **F. Compliance.**

The Department of Civil Service reviews all working-out-of-class payments. The appointing authority shall retain adequate documentation to substantiate compliance with this working-out-of-class regulation. Failure to supply adequate documentation, upon request, may result in revocation of the appointing authority's delegated authority to process future payments for working out of class.

## **5. PROCEDURE**

<b>Responsibility</b>	<b>Action</b>
Agency Management or Employee	1. Submits a request for working-out-of-class compensation and documentation to the appointing authority of the department.
Appointing Authority	2. Reviews the request in accordance with the standards set forth in this regulation and other regulations. 3. Determines the appropriate classification and processes a working-out-of-class payment, in accordance with regulations 5.01 and 5.07. If the request is denied, documents the reason. 4. If the request involves a set of duties that has not been reviewed and classified or a dispute between the employee and the appointing authority as to the proper classification of the temporary assignment, submits a Position Action Request form (CS-129), Position Description form (CS-214), and any other necessary documentation to the Department of Civil Service for a classification review.



Responsibility (continued)	Action (continued)
Department of Civil Service	<p>5. Reviews the working-out-of-class request that involves a set of duties that has not been previously classified to determine the proper classification and approvable time-frame, documents it on the Position Action Request, and releases the Position Action Request form (CS-129) as a "No Action."</p> <p>6. If the working-out-of-class request is denied, informs employee of the working-out-of-class decision and appeal rights.</p>
Appointing Authority	<p>7. Receives the Position Action Request form for the position review.</p> <p>8. Processes the approval for payment, if appropriate.</p>

## **CONTACT**

Questions regarding this regulation should be directed to the Department of Civil Service, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone, at 517-373-3048 or 1-800-788-1766; or by e-mail to [MDCS-BHRS@michigan.gov](mailto:MDCS-BHRS@michigan.gov).

**NOTE:** Regulations are issued by the State Personnel Director, under authority granted in the *State of Michigan Constitution* and the *Michigan Civil Service Commission Rules*. Regulations that implement Commission Rules are subordinate to those Rules.